

REMARKS

Claims 1-24 are pending in this application, with claims 1-4 and 17-24 having been withdrawn from consideration.

In the Office Action of August 3, 2004,¹ claims 5, 6, and 14-16 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,629,136 to *Naidoo* (“*Naidoo*”) in view of PCT International Publication No. WO 01/28273 A1 (“*Lammi*”); claims 7-11 were rejected under 35 U.S.C. § 103(a) as unpatentable over *Naidoo* in view of *Lammi* in further view of U.S. Patent No. 6,330,598 to *Beckwith et al.* (“*Beckwith*”); claim 12 was rejected under 35 U.S.C. § 103(a) as unpatentable over *Naidoo* in view of *Lammi* in further view of U.S. Patent No. 6,636,489 to *Fingerhut* (“*Fingerhut*”); and claim 13 was rejected under 35 U.S.C. § 103(a) as unpatentable over *Naidoo* in view of *Lammi* in further view of *Fingerhut* and *Beckwith*.

Applicants traverse the above-noted rejections for the following reasons.

In order to maintain a rejection under 35 U.S.C. § 103(a), the references upon which the rejection is based must qualify as prior art. *Lammi*, upon which all outstanding rejections are based, does not qualify as prior art to Applicants’ claims. *Lammi* is based on an international application filed before November 29, 2000, and it is therefore not prior art under 35 U.S.C. § 102(e). See M.P.E.P. § 2136.03(II). In addition, Applicants’ filing date (January 5, 2001) is earlier than *Lammi*’s publication date (April 19, 2001). Although *Lammi* shows a foreign priority date of October 11, 1999, that foreign priority date cannot be used for prior art purposes. Consequently, *Lammi* is not available as prior art to Applicants’ claims and, thus, cannot be used in combination with *Naidoo*, *Beckwith*, or *Fingerhut* to reject Applicants’ claims.

¹ The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

For at least this reason, the outstanding rejections under 35 U.S.C. § 103(a), all of which are based on *Lammi*, should be withdrawn. Applicants thus request withdrawal of the rejections under 35 U.S.C. § 103(a) and the timely allowance of claims 5-16, which are, *prima facie*, in condition for allowance.

In the Office Action, the Examiner indicated that document DE 19638072, which was cited in an Information Disclosure Statement (IDS) filed July 25, 2002, was not considered because there was no English translation. Applicants file a supplemental IDS citing DE 19638072 and providing an English language Abstract thereof concurrently with this paper. Additionally, Applicants point out that the IDS filing dates of 4/29/02, 7/29/02 and 6/3/04 noted by the Examiner in the Office Action do not appear correct. Applicants filed IDSs in this application on May 26, 2004, July 25, 2002, April 25, 2002, and January 5, 2001. Attached herewith are copies of the stamped postcards showing that the IDSs were filed on those dates.


Applicants request the Examiner's reconsideration of the application in view of the foregoing, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: November 3, 2004

By: 
Frank A. Italiano
Reg. No. 53,056